

D/L
Item No 05
22.06.2023
KOLE

IA NO. CAN 2 of 2023
With
FMA 1301 of 2022
Sudarshon Pradhan
-Vs.-
The Kolkata Municipal Corporation & Ors.

Mr. Alin Kr. Chatterjee,
Mr. Dinesh Pani,

...for the appellant.

Mr. Alok Kr. Ghosh,
Mr. Swapan Kr. Debnath,

...for the KMC.

In Re: IA No. CAN 2 of 2023:

This application has been filed for recall of an order dated December 12, 2022, whereby FMA 1301 of 2022 was dismissed along with the connected application. The applicant had earlier approached this Court by filing WP No. 13285 (W) of 2012 praying for a direction on the Kolkata Municipal Corporation (in short 'KMC') to re-fix the scale of pay taking into account the various promotions that he got in service. By a judgment and order dated August 28, 2014, the said writ petition was disposed of by a learned Single Judge with the following directions:-

“Accordingly, the respondents are directed to re-fix the petitioner’s scale of pay notionally in the posts of Air Compressor Operator, Chargehand and Foreman on and from 26th February, 1994, 1st April, 1996 and 16th December, 2006 respectively and to grant the actual financial benefits to the petitioner, pertaining to such re-fixation, on and from date of filing of the instant writ application, i.e., 26th June, 2012. Such direction shall be complied with by the respondents within a period of eight weeks

from the date of communication of this order.”

In the present round of litigation the applicant approached the learned Single Judge praying for issuance of a writ of mandamus directing the KMC authorities to release arrear financial benefits upon refixation of pay with notional benefits in terms of the direction passed by the learned Single Judge in the earlier writ petition by order dated August 28, 2014, the operative portion whereof we have extracted above.

The learned Judge noted that in the affidavit in opposition KMC specifically stated that in compliance of the aforesaid order dated August 28, 2014, KMC had refixed the pay scale and basic pay scale of the writ petitioner and the amount due and payable was released to the petitioner and the same was accepted by him. There was no specific denial of such averment in the affidavit in reply filed by the writ petitioner. The learned Judge held that the writ petitioner had in fact received more benefit than he was entitled to in terms of the order dated August 28, 2014. Accordingly, the learned Judge dismissed the writ petition.

Being aggrieved the writ petitioner had come up before us by filing an appeal renumbered as FMA 1301 of 2022. This bench, upon hearing learned Advocates for both the parties had affirmed the order of the learned Single Judge and had dismissed the appeal by a judgment and order dated December 12, 2022. The order was passed on merits and in the presence of both the parties. There can be

no question of recall of the said order. If the applicant is aggrieved by the judgment and order dated December 12, 2022, it is open to the appellant to challenge the order before the appropriate forum.

IA No. CAN 2 of 2023 is, accordingly, dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)